

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

WILLIE JAMES MCNULTY,
TDCJ #1038272,

Petitioner,

v.

DOUG DRETKE, Director,
Texas Department of Criminal Justice -
Correctional Institutions Division,

Respondent.

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CIVIL ACTION NO. H-04-4306

APPEAL NO. 05-20416

ORDER ON REMAND

In an order entered on March 31, 2005, the Court granted the respondent's motion for summary judgment and dismissed the federal habeas corpus petition filed by state inmate Willie James McNulty. The time to file a notice of appeal expired on Monday, May 2, 2005. *See* FED. R. APP. P. 26(a)(3). The Fifth Circuit received McNulty's notice of appeal on May 11, 2005, which is outside the time limit for perfecting an appeal. Therefore, the Fifth Circuit has remanded this case for a determination of whether McNulty delivered his notice of appeal to prison officials on or before the May 2, 2005 deadline. (Docket Entry No. 27). A prisoner, McNulty proceeds *pro se* in this instance. Under the "mail-box rule" announced in *Houston v. Lack*, 487 U.S. 266, 275-76 (1988), a prisoner's notice of appeal is deemed timely filed when he delivers the notice to prison officials for mailing. *See also* FED. R. APP. P. 4(c)(1). McNulty's notice of appeal is dated April 25, 2005. The


notice of appeal contains a certificate of service in which McNulty “attests” that he gave his pleadings to the “Connally unit prison officials to be filed . . . [o]n April 25, 2005.” Therefore, the record indicates that McNulty delivered his pleadings to prison officials for mailing, at the latest, on April 25, 2005.

A *pro se* prisoner’s notice of appeal is timely filed if deposited in the institution’s internal mail system on or before the last day for filing. *See* FED. R. APP. P. 4(c)(1). Because the record indicates that McNulty tendered his notice of appeal for mailing before the May 2, 2005 deadline, his notice of appeal is deemed timely under the mailbox rule.

The Clerk will provide copies of this order to the parties and shall return this case to the United States Court of Appeals for the Fifth Circuit.

The Clerk shall provide a copy of this order to the parties.

SIGNED at Houston, Texas, on **August 31, 2005**.


Nancy F. Atlas
United States District Judge